Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

WEN-CHOUH LIN,

Petitioner,

v.

ANITA C.S. LIN,

Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of North Carolina and
the North Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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65 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court erred in ordering permanent alimony in 1991 before ordering equitable distribution in 1997 when both permanent alimony and equitable distribution were requested in 1990 to deprive petitioner of his liberty and retirement benefits without due process of law and the equal protection of the laws.

2. Whether Sixth Amendment right to counsel extends to civil proceedings that the court-appointed attorney in a contempt hearing would invoke personal jurisdiction over petitioner in respondent's claim for equitable distribution and petitioner was deprived of rights to due process of law and the equal protection of the laws.

3. Whether the trial court erred in ordering equitable distribution in 1997 after the parties' divorce in 1994 when respondent's Motion for Equitable Distribution filed in 1996 could not be pending to deprive petitioner of his retirement benefits without the equal protection of the laws.

4. Whether respondent obstructed justice by omitting her 1979-1989 income tax returns to conceal her status as head of household and married persons who live apart, to allege that she did not live apart and that petitioner abandoned her, and to deny petitioner the right to due process.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Wen-chouh Lin respectfully petitions for a writ of certiorari to review the order of the Supreme Court of North Carolina and the decision of the North Carolina Court of Appeals in this case.

OPINIONS BELOW

The order of the Supreme Court of North Carolina was entered April 2, 1998 and reproduced at App. 1. The decision of the North Carolina Court of Appeals was filed on February 3, 1998 as an unpublished opinion and reproduced at App. 3.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1527. Pursuant to Rule 13.1 of this Court, this petition is timely because the order of the Supreme Court of North Carolina was entered April 2, 1998, dismissing petitioner's Notice of Appeal (Constitutional Question) and denying his Petition for Discretionary Review.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

1. The Constitution of the United States provides in part:

> Amendment VI. In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.
>
> ....
>
> Amendment XIV, § 1. [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Section 19 of the Constitution of North Carolina, Article I provides in part:

> "No person shall be ... deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws."

3. 26 U.S.C. §§ 2(b), 7703(b) See pp. 17-18.

4. The General Statutes of North Carolina provide in part:

> § 1-11. A party may appear either in person or by attorney in actions or proceedings in which he is interested.
>
> ....
>
> § 50-11(e) An absolute divorce obtained within this State shall destroy the right of a spouse to an equitable distribution of the property under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce ....
>
> ....
>
> §50-16.5(a) Alimony shall be in such amount ... having due regard to the estates ... of the parties
>
> ....
>
> ....
>
> §50-20(f) The court shall provide for an equitable distribution without regard to alimony for either party ....
>
> §50-21(d) .... At the conference the court shall ... rule upon any motions ... including applications to determine the date of separation
>
> ....
>
> ....
>
> §84-11. Every attorney who claims to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by

some person duly authorized in that behalf, otherwise he shall not be allowed so to do ....

5. Rule 26(g) of North Carolina Rules of Appellate Procedure provides:

> **Form of Papers; Copies.** Papers presented to either appellate court for filing shall be letter size (8½ x 11") with the exception of wills and exhibits. Documents filed in the trial division prior to July 1, 1982, may be included in records on appeal whether they are letter size or legal size (8½ x 14"). All printed matter must appear in at least 11 point type on unglazed white paper of 16-20 pound substance so as to produce a clear, black image, leaving a margin of approximately one inch on each side. The body of text shall be presented with double spacing between each line of text. The format of all papers presented for filing shall follow the instructions found in the Appendixes to these Appellate Rules.

6. Civil District Rules 14th Judicial District (14CDR) of North Carolina provide in part:

> RULE 6: TIME STANDARDS TO BE MET
>
> 6.1 ... It is expected that all domestic relations cases involving equitable distribution will be disposed of within one (1) year.
>
> ....
>
> 16.2 Unless a consent order for permanent alimony is filed or an extension of time is otherwise ordered by the presiding judge, the moving party in a case involving both equitable

distribution and permanent alimony shall schedule the case for trial of the claim for permanent alimony through the Trial Court Administrator's Office within sixty (60) days after the resolution of the claim for equitable distribution.

STATEMENT OF THE CASE

Petitioner filed Complaint for Absolute Divorce on November 13, 1990. (App. at 10) Respondent filed Answer and Counterclaim for equitable distribution, alimony pendente lite and alimony on December 18, 1990. (App. at 10-11, 19) She said under oath that copies of State and Federal Income Tax Returns were attached to the affidavit as required, but she did not. *Id.* at 2. (Record, p. 8, Appellant's Brief, App. at 47) Copies of her State and Federal Income Tax Returns show that she declared herself, under penalties of perjury, Head of Household and Married Persons Who Live Apart from 1979 to 1989 inclusively. (Appellant's Brief, App. at 78-96) Nevertheless, she alleged that she did not live apart and that petitioner abandoned her to counterclaim for alimony. (Record, pp. 7-8) Petitioner's attorney withdrew after the trial court ordered alimony pendente lite and attorney's fees on February 6, 1991. (App. at 11)

Petitioner employed another attorney. Respondent's counterclaim for alimony was heard without a jury. (App. at 10) The trial court found that petitioner had a disposable monthly earnings of $1,700.00 of which $1,100.00 was necessary for his living expenses, leaving $600.00 for other applications and entered Judgment for

permanent alimony of $550.00 and attorney's fees of $400.00 per month on October 11, 1991. (App. at 14-16) Petitioner found that his attorney handled alimony before divorce and equitable distribution in violation of 14CDR-16.2 and N.C. Gen. Stat. §§ 50-16.5(a) and 50-20(f) to deprive him of due process of law. (Appellant's Brief, App. at 5) Petitioner's attorney withdrew. Petitioner moved and the trial court denied his motion to vacate alimony. (Appellant's Brief, App. at 5, 11) The trial court has deprived petitioner of his liberty several times and entered Order of Assignment of Personalty for alimony and attorney's fees past due. (App. at 25, Record, p. 67) Petitioner has paid $51,960.15 in alimony and attorney's fees, in addition to commitments.

In a later case, File No. 94-CVD-2124, respondent (plaintiff in that action) obtained a Summary Judgment of Absolute Divorce on December 13, 1994. (App. at 31)

On January 13, 1997, petitioner received a letter with a copy of Order for Final Pretrial Hearing from Mr. Harry L. Southerland, who was appointed by the trial court for a show cause brought by the respondent, noticing petitioner the court date on January 8, 1997 while petitioner had been on leave and out of town since the end of August 1996. (App. at 18, 21, 26, 34) Petitioner replied, with copy to respondent's attorney, that he did not and would not hire Mr. Southerland or anybody else in his offices to be his attorney. (App. at 35) He wrote to the Clerk of Superior Court to make sure that he represented himself on the record and to request a copy of Order of Distribution of Marital Property entered on January 8, 1997. (App. at 23, 36)

Evidence shows that petitioner did not know anything about the respondent's claim for equitable distribution and said Order in time. (App. at 21, 26, 35) The trial court awarded 55% of petitioner's retirement benefits to the respondent, when he was over 63 years old. (App. at 28, Record, p. 79) There was already a satisfactory distribution of marital property at separation. (App. 24, Record, pp. 93, 97)

Petitioner appealed to the North Carolina Court of Appeals on January 31, 1997. The Proposed Alternative Record on Appeal was filed March 27, 1997. In petitioner's Brief, federal questions raised therein for review were:

QUESTIONS PRESENTED

I. Did the trial court act contrary to G.S. 50-11?

II. Did the trial court have jurisdiction over this counterclaim for equitable distribution?

III. Did the trial court act contrary to its own rules, G.S. 50-20(f), the decisions of this court and due process of law with respect to equitable distribution and alimony?

IV. Did the trial court act contrary to G.S. 1A-1, Rule 41(a, c)?

V. Was the trial court deceived by a scheme to deprive plaintiff of pro se and his property without due process of law?

VI. Did the trial court act contrary to G.S. 1-75.10, G.S. 1-75.11, G.S. 1A1, Rule 65(a) and due process of law?

VII. Did the trial court act contrary to its own rules, G.S. 50-21 and due process of law?

....

XIII. Did the defendant deceive the trial court and obstruct justice by omitting her State and Federal Income Tax Returns concerning the date of separation?

Id. at 1-2. On February 3, 1998, the North Carolina Court of Appeals dismissed this case on the grounds that petitioner's brief containing more than 65 characters per line violated its interpretation of N.C.R. App. P. 26(g). (App. at 4) Said interpretation is not prescribed in said Rule. Then briefly addressing certain of petitioner's contentions, the North Carolina Court of Appeals concluded the remaining assignments of error to be similarly without merit. (App. at 9)

On March 3, 1998, petitioner filed Notice of Appeal (Constitutional Question) and Petition for Discretionary Review with the Supreme Court of North Carolina. He prayed to the Court that "Layman plaintiff was not aware of said interpretation and has obeyed. He respectfully prays this Court to forgive his typographic and harmless error." *Id.* at 4. Federal questions raised therein for review were:

REASONS WHY CERTIFICATION SHOULD ISSUE

I. The trial court erred in ordering permanent alimony in 1991 before ordering equitable distribution in 1997 when both permanent alimony

and equitable distribution were requested in 1990 to deprive plaintiff of his liberty and retirement benefits without due process of law and equal protection of the laws 5

II. That the trial court appointed an attorney for plaintiff in a contempt hearing would not invoke personal jurisdiction over plaintiff in defendant's claim for equitable distribution and plaintiff was deprived of right to due process of law 6

III. The trial court erred in ordering equitable distribution in 1997 after the parties' divorce in 1994 when defendant's Motion for Equitable Distribution filed in 1996 was not pending to deprive plaintiff of his retirement benefits without equal protection of the laws 8

IV. Defendant obstructed justice by omitting her income tax returns from 1979 to 1989 to conceal her status of head of household and married persons who live apart for her allegation of separtion in 1990 . . . 12

Id. at i. On April 2, 1998, the Supreme Court of North Carolina dismissed ex mero motu petitioner's Notice of Appeal (Constitutional Question) and denied his Petition for Discretionary Review. (App. at 1)

DIRECT AND CONCISE ARGUMENT

Due process of law, when applied to judicial proceedings, means a course of legal proceedings pursuant to those rules and principles which have been

established in our jurisprudence for the protection and enforcement of private rights. *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877). "Due process of law ... in the States is regulated by the law of the state." *Walker v. Sauvinet*, 92 U.S. 90, 93 (1875). "Equal protection of the laws requires equal operation of the laws upon all persons in like circumstances." *Maxwell v. Bugbee*, 250 U.S. 525, 541 (1919). "A state violates the Equal Protection Clause when it irrationally treats differently those similarly situated." *Silva v. Vowell*, 621 F.2d 640, 647 (5th Cir. 1980) *rehearing denied*, 625 F.2d 1016, *cert. denied*, 449 U.S. 1125 (1981) The decisions below deprived petitioner of rights under the "law of the land" and conflicted with the decisions of this Court in the cases, *supra* and the cases, *infra*.

I. The trial court erred in ordering permanent alimony in 1991 before ordering equitable distribution in 1997 when both permanent alimony and equitable distribution were requested in 1990 to deprive petitioner of his liberty and retirement benefits without due process of law and the equal protection of the laws.

Rule 16.2 of Civil District Rules 14th Judicial District of North Carolina provides that when both equitable distribution and permanent alimony are involved, equitable distribution shall be resolved first. Furthermore, the relationship between permanent alimony and equitable distribution in N.C. Gen. Stat. §§ 50-16.5(a) and 50-20(f) was settled in *Talent v. Talent* as follows:

> When both permanent alimony and equitable distribution are requested as in this case, the equitable distribution should be decided first. *See Capps v. Capps*, 69 N.C. App. 755, 318 S.E. 2d 346 (1984); *see also McIntosh v. McIntosh*, 74 N.C. App. 554, 328 S.E. 2d 600 (1985). The court, in determining whether a party is entitled to alimony, must consider the estates of both parties. Until it is decided how the marital property is to be distributed, the parties' estates cannot definitely be determined.

76 N.C. App. 545, 556, 334 S.E.2d 256, 263 (1985). In this case, as in *Talent v. Talent, supra*, respondent counterclaimed for permanent alimony and equitable distribution on December 18, 1990. (App. at 10-11, 19) The trial court entered Judgment for permanent alimony on October 11, 1991 before Order of Distribution of Marital Property entered January 8, 1997, contrary to its own Rule, Statutes, and the decisions of the North Carolina Court of Appeals to deprive petitioner of his liberty and property. (App. at 15-16, 25, 28) Contrary to settled usages and modes of procedure, the guaranty of due process of law inhibits the taking of one man's property and giving it to another. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 161 (1913). "[C]ivil commitment constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

II. Sixth Amendment right to counsel does not extend to civil proceedings, therefore the court-appointed attorney in a contempt hearing would not invoke personal jurisdiction over petitioner in respondent's claim for equitable

distribution and petitioner was deprived of rights to due process of law and the equal protection of the laws.

A.

The North Carolina Court of Appeals erroneously stated that respondent served on petitioner's attorney a motion for equitable distribution on September 19, 1996. (App. at 4) Evidence shows that the respondent served upon Harry L. Southerland, attorney, said Motion. (App. at 19, Record, p. 61) Mr. Southerland was appointed by the trial court in a contempt hearing brought by the respondent. (App. at 18, Record, p. 43) Said Mr. Southerland's appearance in said contempt hearing would not invoke personal jurisdiction over petitioner since a contempt proceeding is a collateral matter that does not directly bear upon subject matter of the controversy. *Williams v. Williams*, 46 N.C. App. 787, 790, 266 S.E.2d 25, 28 (1980). There is neither statutory right nor a due process right to appointed counsel in civil cases except complexity of the case. *Jolly v. Wright*, 300 N.C. 83, 265 S.E.2d 135 (1980). Sixth Amendment right to counsel does not extend to civil proceedings. *Boulware v. Battaglia*, 344 F.Supp. 889, 903 (3rd Cir. 1973).

Evidence shows that petitioner did not employ Mr. Southerland. (App. at 17, 35, Appellant's Brief, pp. 4, 8-9) Contrary to N.C. Gen. Stat. §§ 1-11 and 84-11, Mr. Douglas Simons appeared for Mr. Southerland at a pretrial hearing on December 20, 1996 without authority or a letter signed by the petitioner in the Record. (App. at 21) In *Johnson v. Amethyst Corp.*, 120 N.C. App. 529, 532, 463 S.E.2d 397, 400 (1995), the court held:

> "No person has the right to appear as another's attorney without the authority to do so, granted by the party for which he is appearing. *Pueblo of Santa Rosa v. Fall*, 273 U.S. 315, 319, 47 S.Ct. 361, 362, 71 L.Ed. 658 (1927)."

A decree entered against persons not served with process, but for whom an unauthorized appearance has been entered by an attorney, will be reversed. *Hatfield v. King*, 184 U.S. 162 (1902).

B.

As far as this claim for equitable distribution is concerned, respondent is the plaintiff while petitioner is the defendant. (App. 20, 31, 33) Evidence shows that petitioner did not know anything from the Motion for Equitable Distribution filed September 19, 1996 to the Order of Distribution of Marital Property entered January 8, 1997 in time. (App. at 21, 26, 35) The trial court ordered the final pretrial hearing for January 8, 1997 at 10:00 A.M., instead, at 10:01 A.M., entered said Order of Distribution of Marital Property without appearance and proof of service. (App. at 22, 23) Without notice or an opportunity for hearing, the guaranty of due process of law inhibits the taking of one man's property and giving it to another. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 161 (1913).

III. The trial court erred in ordering equitable distribution in 1997 after the parties' divorce in 1994 when respondent's Motion for Equitable Distribution filed in 1996 could not be pending

to deprive petitioner of his retirement benefits without the equal protection of the laws.

A.

N.C. Gen. Stat. § 50-11(e) provides in part:

> "An absolute divorce obtained within this State shall destroy the right of a spouse to an equitable distribution of the property under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce."

In a later case, File No. 94-CVD-2124, respondent (plaintiff in that action) obtained a Summary Judgment of Absolute Divorce on December 13, 1994 and the court further ordered her claim for equitable distribution to this case. (App. at 31, 33) Petitioner moved and the court denied his motion to delete said further order. (Appellant's Brief, App. at 20(a; d)) Nevertheless, the Supreme Court of North Carolina held that divorce judgment had only one operative provision to grant or not to grant the divorce and that the effects of absolute divorce are beyond the power of a court to change. *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987). Therefore, the North Carolina Court of Appeals erred in holding that the respondent's equitable distribution claim survived the entry of divorce. (App. at 5)

The North Carolina Court of Appeals erred in asserting claim for equitable distribution in this case. (App. at 5) Because, in *Stone v. Stone*, 96 N.C. App. 633, 635, 386 S.E.2d 602, 603-04 (1989), the court held:

> "We hardly need say that the better practice would be for members of the Bar to actually file and assert claims for equitable distribution, and for the courts to require that pleadings asserting such claims be filed before the judgment of divorce is granted."

Furthermore, in *Lockamy v. Lockamy*, 111 N.C. App. 260, 261, 432 S.E.2d 176, 177 (1993), the court held:

> The failure to specifically apply for equitable distribution prior to a judgment of absolute divorce will destroy the statutory right to equitable distribution. *Howell v. Howell*, 321 N.C. 87, 361 S.E.2d 585 (1987); *Carter v. Carter*, 102 N.C. App. 440, 402 S.E.2d 469 (1991); *Lutz v. Lutz*, 101 N.C. App. 298, 399 S.E.2d 385, *cert. denied*, 328 N.C. 732, 404 S.E.2d 871 (1991); *Goodwin v. Zeydel*, 96 N.C. App. 670, 387 S.E.2d 57 (1990).

The respondent applied for equitable distribution on September 19, 1996 after said Summary Judgment of Absolute Divorce entered December 13, 1994. (App. at 19, 31) Therefore, her statutory right to equitable distribution was destroyed.

In reviewing subject matter jurisdiction of the trial court over this claim for equitable distribution, the North Carolina Court of Appeals erroneously relied on *Garrison v. Garrison*, 90 N.C. App. 670, 369 S.E.2d 628 (1988) in that the only question therein was whether the superior court erred in ordering the property partitioned

pursuant to G.S. § 46.1 *et seq.* (App. at 5) In *Lockamy v. Lockamy*, *supra*, the court continued to hold:

> We note that in its order of absolute divorce, the trial court found that "all matters of ... Equitable Distribution of property are reserved for future disposition in separate pending action." However, no such separate pending action existed at the time of the judgment of divorce ... Jurisdiction over the subject matter cannot be conferred upon a court by consent, waiver or estoppel. *Pulley v. Pulley*, 255 N.C 423, 121 S.E.2d 876, *aff'd*, 256 N.C. 600, 124 S.E.2d 571, *appeal dismissed by*, 371 U.S. 22, 83 S.Ct. 120, 9 L.Ed.2d 96 (1961).

111 N.C. App. 260, 262, 432 S.E.2d 176, 177 (1993).

The case at bar and *Lockamy v. Lockamy*, *supra* are on all fours. Respondent filed Motion for Equitable Distribution on September 19, 1996. (App. at 19) Said Motion could not be pending when the Summary Judgment of Absolute Divorce was entered December 13, 1994. (App. at 31) The trial court entered Order of Distribution of Marital Property on January 8, 1997, contrary to N.C. Gen. Stat. § 50-11(e) as well as without subject matter jurisdiction to deprive petitioner of equal protection right of both the State and Federal Constitutions.

B.

All divorce cases involving equitable distribution will be disposed of within one (1) year. 14CDR-6.1. The trial court dismissed without prejudice respondent's

counterclaim for equitable distribution in the Judgment for permanent alimony entered October 11, 1991. (App. at 16) In *Moore v. Pate*, 112 N.C. App. 833, 837, 437 S.E.2d 1, 3 (1993), *disc. rev. denied*, 336 N.C. 73, 445 S.E.2d 35 (1994), the court held:

> "In fact, once a party takes a voluntary dismissal no valid order can be entered thereafter except as to collateral matters. *See Collins v. Collins*, 18 N.C. App. 45, 196 S.E.2d 282 (1973)"

Therefore, the trial court erred in entering Order of Distribution of Marital Property on January 8, 1997 after said dismissal. (App. at 23)

IV. Respondent obstructed justice by omitting her 1979-1989 income tax returns to conceal her status as head of household and married persons who live apart, to allege that she did not live apart and that petitioner abandoned her, and to deny petitioner the right to due process.

Pursuant to 26 U.S.C. §§ 2(b), 7703(b), Internal Revenue Service Forms and Instructions 1989 Form 1040 reads in part:

> **Head of Household**
> You may check the box on line 4 **ONLY IF** on December 31, 1989, you were unmarried or legally separated and meet either test **1** or **2** below. The term "unmarried" includes certain married persons who live apart, as discussed on this page.

....

2. You paid more than half the cost of keeping up a home in which you lived and in which one of the following also lived for more than 6 months of the year ....

a. Your **unmarried** child ....

....

Married Persons Who Live Apart. Even if you were not divorced or legally separated in 1989, you may be considered unmarried and file as head of household. (Bold text is original.)

Id. at 7. (Appellant's Brief, App. at 53-54) Instructions for 1979-1988 were the same as to Head of Household and Married Persons Who Live Apart.

In this case, No. 6 of the respondent's verified Answer and Counterclaim reads:

"This Defendant has attached as exhibits to this Answer an 'Affidavit of Financial Standing of Party,' as required by Rule 12 of the Local Rules and Procedure for the Fourteenth Judicial District."

Id. at 2. (Record, p. 8) No. 8 of said Affidavit reads:

"That true and accurate copies of the latest personal State and Federal Income Tax Returns which I have filed are attached to this Affidavit together with copy of my latest Payroll Stub or Voucher."

Id. at 2. (Appellant's Brief, App. at 47) Said copies of State and Federal Income Tax Returns were not attached thereto. Copies of the parties' Federal and State Income Tax Returns for 1979-1989 show that each declared, under penalties of perjury, Head of Household and Married Persons Who Live Apart. (Appellant's Brief, App. at 55-96) Nevertheless, respondent alleged that she did not live apart and that petitioner abandoned her to counterclaim for alimony. (Record, pp. 7-8) She rejected petitioner' proposal for "finding concerning the filing of income tax returns." (App. at 37) "Concealment of document is a corrupt means of influencing, obstructing or impeding administration of justice." *U.S. v. Rasheed*, 663 F.2d 843, 852 (9th Cir. 1981) *cert. denied*, 454 U.S. 1157 (1982).

Findings of Fact of the Judgment entered October 11, 1991 provided in part:

> 5. In May, 1979, Plaintiff decided that he could not get along with Defendant, and he did not sleep with Defendant after that date.
>
> 6. The Court finds that from May 1979 until September 1990, Plaintiff usually slept in 920 Lambeth Circle and Defendant usually slept in 918 Lambeth Circle ....

Id. at 3. (App. at 12) Findings of Fact of the Order of Distribution of Marital Property entered January 8, 1997 provided in part:

> 3. The Plaintiff ... last known address in North Carolina was at 816 Louise Circle, Durham, North Carolina 27705.

> 4. The Defendant ... currently maintains a residence in North Carolina at 918 Lambeth Circle, Durham, North Carolina 27705.

Id. at 1-2. (App. at 23-24) Said findings not only show that the respondent has maintained a residence at 918 Lambeth Circle, Durham, North Carolina 27705 since May 1979 and that the petitioner never lived there, but also confirm that the parties were Married Persons Who Live Apart as declared in their income tax returns.

For the purpose of equitable distribution, N.C. Gen. Stat. § 50-21(d) allows "applications to determine the date of separation", but, in this case, without notice and hearing, the trial court deemed the date of separation to be September 30, 1990, contrary to the said findings and the parties' declarations under penalties of perjury pursuant to 26 U.S.C. §§ 2(b), 7703(b). (App. at 23)

In a letter to petitioner dated March 29, 1995, B. Williams, Disclosure Officer, IRS, wrote therein in part:

> "My research indicates that the requested copies of Anita C. S. Lin's tax returns for 1988 and 1989 were sent to the address shown in item 3 of the Form 4506."

(Appellant's Brief, App. at 97-98) Respondent should produce said copies to verify the date of separation. On the contrary, she argued in her Brief that petitioner should be barred "from introducing tax returns in an attempt to suggest an earlier date of separation." *Id.* at 15. "The due process clause assures a full hearing before the court .... That includes the right to introduce evidence and have judicial findings based upon it."

Baltimore & O. R. Co. v. U.S., 298 U.S. 349, 368-69 (1936).

CONCLUSION

Petitioner respectfully prays that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Wen-chouh Lin
1315 Morreene Road
Apartment 10-N
Durham, NC 27705
(919) 660-5902 (W)

No. 76P98 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

WEN-CHOUH LIN	From NC Court of Appeals
v	(COA97-339)
ANITA C.S. LIN	From Durham
	(90CVD04498)

****

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Plaintiff in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals; the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 2nd day of April 1998.

s/ Orr, J.
For the Court"

Upon consideration of the petition filed by Plaintiff in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 2nd day of April 1998.

s/ Orr, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 1998.

Christie Speir Cameron
Clerk, Supreme Court of
North Carolina
s/ Carol B. Templeton
Assistant Clerk

Copy to:
North Carolina Court of Appeals
Mr. Wen-Chouh Lin
Mr. Roger S. Upchurch, Attorney at Law,
For Anita C.S. Lin
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Mead Data Corporation
Shephard's McGraw-Hill

Seal of the Supreme Court
of North Carolina

App. 3

NO. COA97-339

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 1998

WEN-CHOUH LIN,
Plaintiff,
v.
ANITA C. S. LIN,
Defendant.

Durham County
No. 90 CVD 04498

Appeal by plaintiff from order entered 8 January 1997 by Judge Richard G. Chaney in Durham County District Court. Heard in the Court of Appeals 30 October 1997.

Wen-Chouh Lin, pro se, plaintiff-appellant.

Upchurch & Galifianakis, by Roger S. Upchurch, for defendant-appellee.

J0HN, Judge.

Plaintiff appeals the trial court's "Order of Distribution of Marital Property," contending, *inter alia*, that the court erred in determining that "an equal division of the marital property would not be equitable." We disagree.

Pertinent facts and procedural history are as follows: The parties were married 4 April 1964; on 13 November 1990, plaintiff filed a complaint for absolute divorce. Defendant's 18 December 1990 answer and

counterclaim included a claim for equitable distribution. The parties were divorced 13 December 1994, the judgment providing that defendant's equitable distribution claim would survive entry of the divorce decree and remain pending for hearing on the merits.

On 19 September 1996, defendant filed a motion seeking "order of equitable distribution," a copy of which was served on plaintiff's attorney that same date. In an 8 January 1997 order, the trial court divided the benefits under plaintiff's retirement plan, describing the benefits as "[t]he only identifiable marital property to be divided between the parties." Defendant was awarded "fifty-five percent (55%) of the current value [of the plan] accumulated from April 4, 1964, until and including September 30, 1990." Plaintiff filed timely notice of appeal.

At the outset, we observe plaintiff's appellate brief is in clear violation of N.C.R. App. P. 26(g) (Rule 26(g) to require appellate briefs filed with this Court to be in a format allowing no more than ten characters per horizontal inch, or a maximum of 65 characters per line. Plaintiff's brief contains approximately 99 characters per line.

The appellate rules are mandatory and violation thereof subjects an appeal to dismissal. *Wiseman v. Wiseman*, 68 N.C. App. 252, 255, 314 S.E.2d 566, 567-68 (1984). Accordingly, plaintiff's appeal is hereby dismissed. Notwithstanding, in our discretion, *see* N.C.R. App. P. 2, we briefly address certain of plaintiff's contentions.

The second of plaintiff's fourteen arguments asserts the trial court lacked jurisdiction to enter its equitable

distribution judgment. This contention is totally unfounded.

First, defendant asserted a counterclaim for equitable distribution in her answer to plaintiff's divorce complaint and thus properly preserved her right to equitable distribution pursuant to N.C.G.S. § 50-11 (e) (1995). Further, when the divorce was granted 13 December 1994, the trial court's judgment specified that defendant's equitable distribution claim survived the entry of divorce and remained pending for hearing on the merits. Accordingly, the trial court did not lack jurisdiction to enter its equitable distribution judgment. *See Garrison v. Garrison*, 90 N.C. App. 670, 672, 369 S.E.2d 628, 629 (1988) (parties invoked jurisdiction of trial court by assertion of right to have marital property equitably distributed pursuant to G.S. § 50-20).

Plaintiff also vigorously maintains the trial court's determination that an equal division of the marital property would not be equitable was erroneous. The controlling statute is N.C.G.S. § 50-20 (1995), which provides in pertinent part:

> (c) There shall be an equal division ... of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably.

The statute subsequently lists 13 factors to be considered by the trial court in making its determination. Of particular import is G.S. § 50-20 (c) (12), which allows the court to consider "any other factor which the court finds to be just and proper."

Our General Assembly has thus accorded the trial court broad discretion in its decision regarding what shall constitute an "equitable" division of marital property, and our review is limited to the "clear abuse of discretion" standard which accords great deference to the trial court's discretionary rulings. *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Indeed, we may not overturn such a ruling unless it is shown to have been "so arbitrary that it could lnot have been the result of a reasoned decision." *Id.*

In the order *sub judice*, the trial court provided

> that an equal distribution of the marital property would not be equitable and that it would be equitable to distribute to Defendant-wife Anita C. S. Lin more than one-half of the marital property,

and subsequently set out its reasons for so determining as follows:

> [1.] The separation of the parties was brought about by the fault of the Plaintiff ... who abandoned the Defendant ... without adequate provocation in the latter part of September 1990 when the Defendant ... entered the hospital for major surgery. The Plaintiff ... thereafter willfully failed and refused to provide adequate support for Defendant ... and a Judgment for alimony against [him] and in [her] favor ... was entered herein on October 11, 1991 .

[2.] Defendant ... was a faithful marital partner during the marriage and contributed at least her full share of time and effort, both directly and indirectly to the accumulation of the marital property through her services as spouse, mother of the children of the parties, homemaker and wage earner.

[3.] Defendant ... has had serious medical and health problems that hampered her efforts to support herself since she was abandoned by the Plaintiff .... She has had several jobs during said time of abandonment, but has never earned enough to support herself, and has found it necessary to borrow money for living expenses, causing her to incur debts of several thousands of dollars.

[4.] The Plaintiff ... at all times since the entry of alimony judgment, until he took a leave of absence from his job in the latter part of 1996, had been fully and gainfully employed, with a disposable monthly income increasing from approximately $1,700.00 in 1991 to approximately $2,092.00 in February 1996. In spite of such earnings, he has been found in contempt of court several times for willful failure and refusal to comply with the Court's orders. At the time of this hearing, Plaintiff ... was in contempt under order of the court, and as of Jan. 8, 1997 was in default in payments of alimony and attorney fees as shown by the Court's records in the amount of $21,835.57. A Judgment for Alimony Arrears against Plaintiff ... and in favor of the

> Defendant ... was entered in this action on October 22, 1996, in the amount of $9,869.57. [5.] The Sheriff of Durham County has been unable to find the Plaintiff ... for service of Orders to Show Cause in this Action. In attempting to locate the Plaintiff ... the Sheriff noted in his Return that the plaintiff's telephone was disconnected and that he had taken a leave of absence from his job at Duke University. He was located by telephone at one time in the State of Georgia. The Court finds that the Plaintiff ... left the State of North Carolina with intent to defraud his creditors, including the Defendant. . . .

Succinctly stated, the record fails to show the court's ruling "could not have been the result of a reasoned decision." *Id.* The court's order contained the foregoing detailed factual findings supporting its conclusions, and those findings reflect the court's consideration, in accordance with G.S. § 50-20, of relevant statutory factors including:

> (1) The income, property, and liabilities of each party at the time the division of property is to become effective;
>
> . . .
>
> (3) The duration of the marriage and the age and physical and mental health of both parties;
>
> . . .
>
> (5) The expectation of nonvested pension, retirement, or other deferred compensation rights, which is separate property;

> (6) Any equitable claim to, interest in, or direct or indirect or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts of expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner of homemaker;
>
> . . .
>
> (12) Any other factor which the court finds to be just and proper.

G.S. § 50-20 (c). The trial court did not abuse its discretion.

In consideration of plaintiff's appearance *pro se*, we have also reviewed his remaining assignments of error and conclude them to be similarly without merit.

Appeal dismissed.

Judges LEWIS and SMITH concur.

Report per Rule 30 (e).

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	JUDGMENT Filed OCT 15 1991

THIS CAUSE CAME ON TO BE HEARD, and wad heard on July 30 and 31, 1991, by Richard G. Chaney, District Judge Presiding, without a jury, upon the trial and final determination Defendant's claim for alimony, set forth in the First Counterclaim of the Defendant.

APPEARANCES:

For counterclaimant (Defendant): Roger S. Upchurch, of Upchurch & Galifianakis, Durham.
For Plaintiff: John A. Bowman, of Maxwell & Hutson, Durham.

PROCEDURAL STATEMENT:

Plaintiff brought this action for absolute divorce upon the asserted statutory ground of one year of continuous separation. To Plaintiff's complaint, the Defendant filed Answer and Counterclaim, denying that the parties had been separated for one year, and asserting a First Counterclaim for Alimony, a Second Counterclaim for

Alimony Pendente Lite and a Third Counterclaim for Equitable Distribution.

The Second Counterclaim, for Alimony Pendente Lite was heard by the undersigned Judge, who signed an Order for Alimony Pendente Lite on February 22, 1991, upon Findings of Fact and Conclusions of Law therein set out.

Both parties having waived a jury, the cause came before the Court for the trial and final determination of the First Counterclaim for Alimony, and for counsel fees.

Upon the evidence, the Court makes the following

FINDINGS OF FACT:

1. Both Plaintiff and Defendant are and have been citizens and residents of Durham County, State of North Carolina, for more than six months next preceding the commencement of this action.

2. Plaintiff and Defendant were lawfully married on April 4, 1964. Thereafter they lived together as husband and wife, and three (3) children were born of the marriage, all of said children being of full adult age and sui juris.

3. Plaintiff and Defendant began living in an apartment at 920 Lambeth Circle, Durham, N.C., in or about June, 1968. Thereafter, in August 1978, Plaintiff and Defendant, and their children, lived together in both apartments as one family.

4. Thereafter, in 1979, Plaintiff rented another apartment at 918 Lambeth Circle, and discontinued renting 922 Lambeth Circle. The evidence of both shows that Plaintiff and Defendant, and their children,

thereafter lived together in both 918 and 920 Lambeth Circle as one family.

5. In May, 1979, Plaintiff decided that he could not get along with Defendant, and he did not sleep with Defendant after that date.

6. The Court finds that from May 1979 until September 1990, Plaintiff usually slept in 920 Lambeth Circle and Defendant usually slept in 918 Lambeth Circle; that these apartments were immediately adjacent to each other in the same building, each opening into a common porch; that both Plaintiff and Defendant and their children had full and free access to both apartments, both day and night; that their children, and the Defendant, moved freely between the apartments, at times one or more of the children sleeping in #920 and at other times changing to #918; that from time to time throughout this period from 1979 to 1990, the Defendant did grocery shopping and cooked or otherwise provided meals, of some of which Plaintiff partook with Defendant and the children; Defendant frequently used the kitchen in the #920 apartment to do the cooking, and when there were family meals, they usually were eaten in #920; that Defendant did laundry for Plaintiff and Defendant and the children, using the washing machine located in #920; Plaintiff and Defendant had the same telephone number, and during much of the time they used the same mailbox. During said period, Plaintiff and Defendant entered into a joint business in 1979 which operated until 1986, and about which they conferred regularly and frequently during said period, and shred duties working in said business; that they had a joint checking account at least until 1983, and joint credit cards until about 1987; that Plaintiff and Defendant

jointly entertained overnight house guests once or twice in the early 1980's and had meals with common acquaintances from time to time; that at all times from 1979 until the latter part of September, 1990, Plaintiff and Defendant lived in such manner that the prevailing perception of neighbors and acquaintances was that Plaintiff and Defendant were living together as husband and wife.

7. There was no separation of Plaintiff and Defendant until the latter part of the month of September 1990, at which time Plaintiff moved out of the apartment at 920 Lambeth Circle without the consent or acquiescence of Defendant and without provocation of fault on the part of Defendant, and there was no sufficient justification, cause or excuse therefor; thereafter Plaintiff willfully failed and refused to provide Defendant with adequate subsistence according to his means and condition and according to Defendant's needs, and such conduct constituted and abandonment of Defendant by Plaintiff.

8. During the marriage of the parties, Defendant from time to time had jobs from which she earned money, but she never had sufficient earnings to support herself, and Plaintiff provided the major part of the funds for Defendant's maintenance and support, and Defendant was actually substantially dependent upon Plaintiff for her maintenance and support, and was dependent upon him at the time he abandoned her in the latter part of September 1990, and had substantial need of maintenance and support from him then and thereafter.

9. From April until June 1991, Defendant has been earning a net take-home pay of approximately $450.00 per month; she is in need of at least $1,000.00 per month

for her recurrent reasonable living expenses; in addition she is indebted for cash loans made to her for living expenses, in excess of $3,000.00.

10. At the time of the trial of this cause, Plaintiff had a gross monthly income of $2,540.00 and, after taxes and other required deductions, he had a disposable monthly income of above $1,700.00; that the sum of $1,100.00 is reasonably necessary for his own living expenses, leaving at least $600.00 available from his current earnings for other applications.

11. Defendant is in need of support and maintenance from Plaintiff in the sum of $550.00 per month, which amount Plaintiff is reasonably able to pay.

12. Defendant's attorney, Roger S. Upchurch, has rendered valuable legal services to Defendant since February 7, 1991, the date covered by the Order for Alimony Pendente Lite dated February 22, 1991; he is a experienced attorney and has spent at least 40 hours from February 7, 1991 to date in providing said service, which have included the preparation and trial of Defendant's counterclaim for alimony, and such services are reasonably worth the sum of $110.00 per hour, which rate does not exceed his customary hourly rates for such services, and does not exceed similar rates of charges made by experienced attorneys in the same community.

And upon the foregoing Findings of Fact, the Court draws the following

CONCLUSIONS OF LAW:

A. Plaintiff and Defendant lived together as husband and wife in the usually accepted sense form the time of

their marriage in 1964 continuously until the latter part of the month September, 1990.

B. In the latter part of the month of September, 1990, Plaintiff without legal justification wilfully abandoned Defendant within the meaning and intent of G.S. 50-16.2, and thereafter wilfully failed and refused to provide Defendant with necessary subsistence in accordance with his means and the needs of Defendant; such abandonment took place without provocation or fault on the part of Defendant.

C. Plaintiff is a supporting spouse, and Defendant is a dependent spouse, within the meaning and intent of G.S. 50-16.1.

D. Defendant is entitled to judgment for alimony.

E. Defendant is entitled to an order for reasonable attorney fees to be paid by Plaintiff, in addition to those provided pendente lite in the Order dated February 22, 1991.

NOW, THEREFORE, UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS

ORDERED:

1. Plaintiff, Wen-Chouh Lin, shall pay to Defendant, Anita C.C. Lin, permanent alimony at the rate of $550.00 per month on or before the 5th day of each month hereafter, beginning the 5th day of September 1991.

2. Plaintiff shall pay to Roger S. Upchurch, attorney for Defendant, attorney fees in the sum of $4,400.00, covering legal services to Defendant from February 7, 1991 to date, to be paid $200.00 per month beginning

November 1, 1991, and the first day of each month thereafter, until paid.

3. Plaintiff shall continue monthly payments for Defendant's attorney fees pendente lite provided for in the Order dated February 22, 1991, until the sums therein provided are fully paid.

4. Upon the effective date of the first payment for alimony provided for in this Judgment, the corresponding payments set fourth in the Order for Alimony Pendente Lite dated February 22, 1991 shall terminate.

5. There being no just cause for delay, the Court determines this to be a final adjudication upon Defendant's First Counterclaim for Alimony and Second Counterclaim for Alimony Pendente Lite, but is made without prejudice to Defendant's Third Counterclaim for Equitable Distribution.

Rendered in open court on July 31, 1991, and signed and entered this 11 day of October 1991.

s/ RG Chaney
RICHARD G. CHANEY
District Court Judge

STATE OF NORTH CAROLINA File No.
90CVD04498
In The General Court of Justice
Durham County [x] District [ ] Superior Court Division

Defendant, Petitioner, Respondent	**ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL**
Wen-Chouh Lin	Filed 96 FEB 15
816 Louise Circle	G.S. 7A-450,
Durham, NC 27705	7A-451 (a)

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)
Show cause- alimony and atty fees (temporary)

From the petition heard in this matter, it appears to the Court that the applicant named above is party to a proceeding or action listed in G.S. 7A-451 (a);

and, from the affidavit made by the applicant, and from the inquiry made by the Court, which is documented in the record, it is determined that the applicant;

[ ] is not likely to be imprisoned if he is convicted of the offense(s) for which he is charged; it is ORDERED that the defendant's petition is denied.

[ ] is not likely to be imprisoned if he is in contempt; it is ORDERED that the defendant's petition is denied.

[ ] is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not an indigent and his petition is denied.

[x] is not financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is an indigent and is entitled to the services of counsel as contemplated by law, and that he shall be represented by:

[x] the attorney named below.[ ] the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable) Harry Southerland 315 E. Chapel Hill St. Suite 205 Durham, NC 27702 (919) 688-3491	Date 2-14-96 Signature s/ RG Chaney [x] Judge [ ] Clerk of Superior Court

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	MOTION FOR EQUITABLE DISTRIBUTION Filed 96 SEP 19

Defendant Anita C.S. Lin respectfully shows to the Court:

1. This action originally was commenced on December 18, 1990 as a divorce action brought by the Plaintiff Wen-chouh Lin. The undersigned movant filed Answer alleging, among other things, a Counterclaim for Equitable Distribution .

2. Judgment for alimony was entered herein on October 11, 1991 (filed October 15, 1991) awarding alimony to the undersigned movant, Defendant Anita C.S. Lin, expressly without prejudice to her Counterclaim for Equitable Distribution.

3. After the aforesaid alimony judgment in this action, the parties were divorced in a separate action in this Court, File No. 94-CVD-2124 entitled "Anita C.S. Lin -vs- Wen-chouh Lin", by a Summary Judgment of Absolute Divorce entered and filed on December 13, 1994, which judgment also provided:

"IT IS FURTHER ORDERED AND DECREED that the Plaintiff's claim for equitable distribution shall survive the entry of this judgment, and shall remain pending for hearing upon its merits in this Court, in File No. 90-CVD-4498."

WHEREFORE, the Defendant Anita C.S. Lin moves for an order of equitable distribution of the marital property of the parties.

Respectfully submitted, this 19 day of September 1996.

s/ Roger S Upchurch
Attorney for Defendant Anita C.S. Lin

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	ORDER FOR FINAL PRETRAI L HEARING

THIS CAUSE CAME ON TO BE HEARD upon the regular pre-trial calendar, on December 20, 1996, the Defendant Anita C.S. Lin having moved, through counsel, for equitable distribution.

APPEARANCES: For the Plaintiff Wen-chouh Lin: Harry L. Southerland, Durham; Douglas Simons appearing.

For the Defendant Anita C.S. Lin: Upchurch & Galifianakis, Durham; Roger S. Upchurch appearing.

IT APPEARS TO THE COURT from the statement of counsel that the Plaintiff Wen-chouh Lin has not responded to his counsel and that his counsel has not been able to contact the Plaintiff Wen-chouh Lin;

It further appears from the record that this court has previously found that the Plaintiff Wen-chouh Lin is grossly and willfully in arrears in payments of alimony and attorney fees ordered by this court, and is now in contempt of this court, as found in prior orders in this action; that he cannot be located by the sheriff of Durham County and that he has probably left the State of North Carolina with intent to avoid service of process in

this state, and with intent to defraud his creditors, including the Defendant Anita C.S. Lin.

THE COURT HAVING INQUIRED OF COUNSEL, and neither party desiring to have further discovery,

IT IS HEREBY ORDERED

1. That this cause is set for final pretrial hearing on equitable distribution for Monday, January 8, 1997 at 10:00 A.M.

2. That if the Plaintiff Wen-chouh Lin is not present for said hearing, the Court will be prepared at that time to consider entering a final order of equitable distribution.

Rendered in open court on December 20, 1996, and made and entered this 30 day of December 1996.

s/ RG Chaney
District Judge Presiding

NORTH CAROLINA	FILE NO. 90-CVD-04498 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
WEN-CHOUH LIN, Plaintiff vs. ANITA C. S. LIN, Defendant	ORDER OF DISTRIBUTION OF MARITAL PROPERTY (QUALIFIED DOMESTIC RELATIONS ORDER) Filed JAN 8 1997 at 10:01 AM

THIS CAUSE CAME ON TO BE HEARD before the undersigned District Court Judge upon the wife C. S. Lin's Counterclaim for equitable Distribution of the marital property of the parties. The Court, after hearing the evidence and examining the record, makes the following

FINDINGS OF FACT:

1. The plaintiff and defendant were formerly husband and wife, having been married to each other on the 4th day of April, 1964; they separated in September 1990, deemed to be September 30, 1990, and divorced on the 13th day of December, 1994.

2. The plaintiff and the defendant have been residents of the State of North Carolina for a number of years, and this Court has both personal and subject matter jurisdiction of this action.

3. The Plaintiff-husband Wen-chouh Lin's Social Security number is 134-34-8076. His last known address in North Carolina was at 816 Louise Circle, Durham, North Carolina 27705.

4. The Defendant-wife Anita C.S. Lin's Social Security number is 558-74-1124. She currently maintains a residence in North Carolina at 918 Lambeth Circle, Durham, North Carolina 27705.

5. During the marriage of the parties, they acquired and accumulated the retirement benefits under the Duke University Faculty and Staff Retirement Plan which includes the major part of TIAA/CREF benefits described in detail below. Except for such retirement benefits, there are no other significant assets of the parties to be divided as marital property, and no identifiable marital liabilities to be divided.

6. The Court finds that an equal distribution of the marital property would not be equitable and that it would be equitable to distribute to Defendant-wife Anita C. S. Lin more than one-half of the marital property, for the following reasons:

6.1 The separation of the parties was brought about by the fault of the Plaintiff-husband Wen-chouh Lin who abandoned the Defendant-wife Anita C.S. Lin without adequate provocation in the latter part of September 1990 when the Defendant-wife entered the hospital for major surgery. The Plaintiff-husband Wen-chouh Lin thereafter willfully failed and refused to provide adequate support for Defendant-wife Anita C.S. Lin and a Judgment for alimony against Plaintiff-husband Wen-chouh Lin and in favor of Defendant-wife Anita C.S. Lin was entered herein on October 11, 1991 .

6.2 Defendant-wife Anita C.S. Lin was a faithful marital partner during the marriage and

contributed at least her full share of time and effort, both directly and indirectly to the accumulation of the marital property through her services as spouse, mother of the children of the parties, homemaker and wage earner.

6.3 Defendant-wife Anita C.S. Lin has had serious medical and health problems that hampered her efforts to support herself since she was abandoned by the Plaintiff-husband Wen-chouh Lin in September 1990. She has had several jobs during said time of abandonment, but has never earned enough to support herself, and has found it necessary to borrow money for living expenses, causing her to incur debts of several thousands of dollars.

6.4 The Plaintiff-husband Wen-chouh Lin at all times since the entry of alimony judgment, until he took a leave of absence from his job in the latter part of 1996, had been fully and gainfully employed, with a disposable monthly income increasing from approximately $1,700.00 in 1991 to approximately $2,092.00 in February 1996. In spite of such earnings, he has been found in contempt of court several times for willful failure and refusal to comply with the Court's orders. At the time of this hearing, Plaintiff-husband Wen-chouh Lin was in contempt under order of the court, and as of Jan. 8, 1997 was in default in payments of alimony and attorney fees as shown by the Court's records in the amount of $21,835.57. A Judgment for Alimony Arrears against Plaintiff ... and in favor

of the Defendant ... was entered in this action on October 22, 1996, in the amount of $9,869.57.

6.2 The Sheriff of Durham County has been unable to find the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause in this Action. In attempting to locate the Plaintiff-husband Wen-chouh Lin for service of Orders to Show Cause, the Sheriff noted in his Return that the plaintiff's telephone was disconnected and that he had taken a leave of absence from his job at Duke University. He was located by telephone at one time in the State of Georgia. The Court finds that the Plaintiff-husband Wen-chouh Lin left the State of North Carolina with intent to defraud his creditors, including the Defendant-wife Anita C.S. Lin.

7. Plaintiff-husband Wen-chouh Lin, hereinafter referred to as "plaintiff" or "participant", is presently employed by Duke University in Durham, North Carolina, as a librarian and is a participant in the Duke University Faculty and Staff Retirement Plan, which includes benefits through Teachers' Insurance and Annuity Association - College Retirement Equity Fund, hereinafter "TIAA/CREF", as follows:

(a) TIAA/CREF Retirement Annuities:
TIAA Contract No. A219858-6
CREF Certificate No. P137173-6

(b) TIAA/CREF Supplemental Retirement Annuities:
TIAA Contract No. K164744-1
CREF Certificate No. J164744-3.

8. So much of the Plaintiff's benefits under the Duke University Faculty and Staff Retirement Plan as have

accumulated from the marriage of the parties on April 4, 1964, until the deemed date of separation on September 30, 1990, are marital property pursuant to the provisions of N.C.G.S. § 50-20 et. seq., and pursuant to federal statute, North Carolina law and the provisions of the above retirement accounts. The Court may order to be transferred to the defendant under a Qualified Domestic Relations Order a portion of the assets of the above retirement accounts.

9. The Court finds the following division of the marital property to be equitable:

9.1 The Defendant-wife Anita C.S. Lin, as Alternate Payee, should receive, and the Plan Administrator should be authorized to take from these accounts, fifty-five percent (55%) of the current value of the above retirement accounts accumulated from April 4, 1964 until and including September 30, 1990.

9.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

AND UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING

CONCLUSION OF LAW:

1. There are no identifiable marital liabilities to be divided between the parties.

2. The only identifiable marital property to be divided between the parties are the benefits under the Duke University Faculty and Staff Retirement Plan in which the Plaintiff-husband Wen-chouh Lin is enrolled,

consisting of TTAA and CREF accounts described in Findings of Fact Nos. 8 and 9 above.

3. The following division of the marital property will effect an equitable distribution of the marital property:

3.1 Defendant-wife Anita C.S. Lin, as Alternate Payee, is entitled to receive, from the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

3.2 The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

3.3 All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, except that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, should continue to belong to the Plaintiff-husband Wen- chouh Lin.

NOW, THEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. Defendant-wife Anita C.S. Lin shall have as her sole and separate property the following:

From the TIAA and CREF accounts in which the Plaintiff-husband Wen-chouh Lin is the Participant, Fifty-five percent (55%) of the current value of the TIAA/CREF retirement accounts accumulated from April 4, 1964, until and including September 30, 1990.

2. The current value should reflect interim interest and divided earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF.

CONCLUSION OF LAW

3. The accounts so awarded to Defendant-wife shall be immediately assigned and set aside in a new retirement account or accounts solely in the name of Anita C.S. Lin, the defendant, as Alternate Payee. All ownership rights in the account as so set aside, shall belong to Defendant-wife Anita C.S. Lin, including, if elected, death benefits to survivors.

2. Plaintiff-husband Wen-chouh Lin shall receive as his sole and separate property the following:

> All ownership and interest in the balance of the TIAA Annuities and the CREF Certificate, other than that set aside as aforesaid for the Defendant-wife Anita C.S. Lin, shall continue to belong to the Plaintiff-husband Wen-chouh Lin.

The parties are directed to timely submit to TIAA-CREF all documents, including Releases that are required to finalize this order.

This Order:

a. Does not require any Plan to provide any type of form of benefit, or any option, not otherwise provided under the Plan.

b. does not require TIAA-CREF to provide increased benefits and

c. does not require the payment of benefits to an Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

5. This Order is intended to be a Qualified Domestic Relations Order (QDRO) and shall be entered and submitted to the Plan Administrator, embodying the appropriate provisions, consistent herewith, to authorize and direct the implementation of the equitable distribution of the retirement benefits.

6. This cause is retained by the Court for such other and further orders as may be proper and appropriate to implement this Order.

Rendered on Jan. 8, 1997, and signed and entered on Jan. 8, 1997.

s/ RG Chaney
DISTRICT COURT JUDGE
14TH JUDICIAL DISTRICT
OF N.C.

NORTH CAROLINA	FILE NO. 94-CVD-2124 IN THE GENERAL COURT
DURHAM COUNTY	OF JUSTICE DISTRICT COURT DIVISION
ANITA C. S. LIN, Plaintiff vs. WEN-CHOUH LIN, Defendant	SUMMARY JUDGMENT 0F ABSOLUTE DIVORCE Filed DEC 13 1994

THIS CAUSE COMES ON TO BE HEARD before the undersigned Judge, upon Plaintiff's Motion for Summary Judgment under Rule 56, N.C. Rules of Civil Procedure and under authority of G.S. 50-10.

IT APPEARS that this is an action for absolute divorce under G.S. 50-6; that the Defendant has filed answer, pro se, to the complaint; that Defendant has been properly served with notice of hearing upon said Motion for Summary Judgment;

And it further appears to the Court from the verified complaint, the defendant's answer and admissions of record, the Plaintiff's and Defendant's affidavits and other records of this court, that there is no genuine issue s to any material fact to be tried by a jury, and that the moving party is entitled to have the Court find the facts and enter judgment as a matter of law under G.S. 50-10.

The Court therefore makes the following

FINDINGS OF FACT:

1. The Plaintiff has been a citizen and resident of the State of North Carolina for more than six months next preceding the commencement of this action.

2. The Plaintiff and the Defendant were lawfully married to each other as alleged in the Complaint.
3. The Plaintiff and the Defendant have lived continuously separate and apart from each other for more than one year next preceding the commencement of this action.

THE COURT FURTHER FINDS that three children were born of the marriage of the parties, all of whom are of full adult age and *sui juris*; that there is now pending in this Court a claim for alimony and support and for equitable distribution, to wit, No. 90-CVD-4498, in which action a judgment for alimony was signed and entered on 11 October 1991 by R.J. [sic] Chaney, Judge Presiding, which judgment also expressly was made without prejudice to Anita C.S. Lin's claim for equitable distribution; that the claim for equitable distribution should survive this judgment and remain pending on its merits in this Court, in File No. 909-CVD-4498.

And upon the foregoing Findings of Fact, the Court draws the following

ONCLUCSIONS OF LAW:

1. The Court has full jurisdiction of the parties and of the subject matter of this action, and full authority to find the facts and render judgment.

2. There is no genuine issue as to any material fact on the Plaintiff's claim for absolute divorce, and the Plaintiff is entitled to a summary judgment of absolute divorce from the Defendant under N.C.G.S. 50-6 and 50-10.

NOW THEREFORE, upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED, ADJUDGED AND DECREED:

That Summary Judgment is hereby granted; and the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be and they are hereby forever dissolved, and the Plaintiff is hereby forever dissolved, and the Plaintiff is hereby granted an absolute divorce from the Defendant.

IT IS FURTHER ORDERED AND DECREED that the Plaintiff's claim for equitable distribution shall survive the entry of this judgment, and shall remain pending for hearing upon its merits in this Court, in File No. 90-CVD-4498.

This 13 day of December 1994.

s/ WY Manson
JUDGE PRESIDING
District Court, Fourteenth
Judicial District of North Carolina

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Southerland & Simons
Attorney and Counselor at Law

P.O.Box 1194 (919) 682-6206
315 E. Chapel Hill Street, Suite 205 (919) 688-3491
Durham, NC 27702 Fax (919) 688-8545

January 3, 1997

Mr. Wen-Chouh Lin
816 Louise Circle
Durham, North Carolina 27706

Dear Mr. Lin:

Re:Court Date

Please be advised that your next Court date is:

DAY: Wednesday
DATE: January 8, 1997
PLACE: Durham, North Carolina
TIME: 10:00 a.m.

[x] Please contact the office to confirm receipt of this Notice.
[ ] It is not necessary for you to appear.
[x] Your appearance is necessary, please be on time.
[ ] Other.
[ ] Please call me so we can talk about the case!

Thank you,

THE LAW OFFICES OF HARRY L. SOUTHERLAND

s/ Victoria Cash
Legal Secretary for Harry L. Southerland

App. 35

Certified Mail No. P 058 769 273

PO Box 769122
Roswell, GA 30076
January 15, 1997

Harry L. Southerland, Esq.
PO Box 1194
Durham, NC 27702

Dear Mr. Southerland:

On January 13, 1997 I received your letter of January 3, 1997, noticing me the court date on January 8, 1997.

I did not and will not hire you or anybody in your offices to represent me in equitable distribution. Your transgressions should be liable for the injuries to me in the past, now and in the future.

Very truly yours,

s/ Wen-chouh Lin

cc: Roger S. Upchurch, Esq.
Ms. Nancy Tyndall, Empl. Retirement Plan, Duke University
Mr. Joe Kelly, TIAA-CREF

P.S. Please note the change of my address.

App. 36

Certified Mail No. P 508 769 274

PO Box 769122
Roswell, GA 30076
January 17, 1997

Hon. James Leo Carr
Clerk of Superior Court
PO Box 1772
Durham, NC 27702

RE: 90-CVD-04498

Dear Sir:

I am enclosing a copy of my letter to Harry L. Southerland, Esq. to let you know that I did not hire anybody to represent me in equitable distribution. Would you please make sure that I represent myself on the record.

I was informed that Judge R.G. Chaney would "consider entering a final order of equitable distribution" on Monday, January 8, 1977 or thereafter. Please send me a copy of the said Order to my new address: POBox 769122, Roswell, GA 30076. The old address on the record should be changed too.

Thank you very much.

Very truly yours,

s/ Wen-chouh Lin

App. 37

Law Offices
Upchurch & Galifianakis
P.O.Box 1611
Durham, North Carolina 27702
Roger S. Upchurch Suite 200 First Union Building
Nick Galifianakis Telephone (919) 682-5403

August 30, 1991

Mr. John A. Bowman
Attorney at Law
Maxwell & Hutson, P.A.
P.O. Drawer 2252-A
Durham, NC 27702

Re: Wen-Chouh Lin vs.
Anita C.S. Lin
Our File No. 90-128

Dear John:

On further reflection, I could not go along with your suggested finding that the parties did not affirmatively hold themselves out as not separated, nor the proposed finding concerning the filing of income tax returns. Otherwise, I believe the enclosed judgment reflects the points to which we agreed in my office on August 29.

Since you stated you would not have an opportunity to look at this judgment today or tomorrow, I would appreciate it very much if you will contact me on Tuesday, September 4.

I will look forward to hearing from you.

With all good wished, I am

Very truly yours,

s/ Roger S. Upchurch

RSU:
Encl.